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SUPREME COURT OF THE UNITED STATES

WILLIAM F. BONNER, JR., ET AL.
84–1584 *v.*
COMMISSIONER OF INTERNAL REVENUE

WILLIAM KELLEY GLADNEY ET AL.
84–1810 *v.*
COMMISSIONER OF INTERNAL REVENUE

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Nos. 84–1584 AND 84–1810. Decided October 21, 1985

The petitions for writs of certiorari are denied.

JUSTICE O'CONNOR, with whom JUSTICE BLACKMUN and JUSTICE POWELL joins, dissenting.

Section 4945 of the Internal Revenue Code, 26 U. S. C. § 4945, imposes a substantial excise tax on non-charitable expenditures by a private foundation. Transfers remain taxable under this section only as long as the organization retains its foundation status. Upon the termination of that status, tax liability is assessed pursuant to § 507(c). Petitioners are trustees and residuary legatees of a testamentary trust established in 1905 and later organized as a private foundation. In 1971, a Louisiana court ordered the dissolution of the trust and the distribution of its remaining assets to the settlor's heirs. The Internal Revenue Service acknowledged that the trust's § 507(c) liability was zero. Nonetheless, viewing the distributions as § 4945 "taxable expenditures" by a still extant foundation, it imposed a 100% excise tax on the transfer. Petitioners contested liability, and an action in Tax Court ensued. Concluding that the trust's private foundation status terminated upon the issuance of the state court judgment, the court found for petitioners. A divided panel of the Court of Appeals for the Fifth Circuit re-

versed, holding that notwithstanding the prior dissolution of the trust and the absence of any § 507(c) liability whatever, the distribution qualified as a § 4945 taxable expenditure. Because I seriously question whether the harsh result reached by the Court of Appeals is consistent with either the letter or intent of the relevant provisions of the Code, I would grant the petitions for certiorari.